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DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-971]

Multilayered Wood Flooring from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Determination of Countervailing Duty Investigation and Notice of Amended Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On November 15, 2012,¹ the United States Court of International Trade ("CIT") sustained the Department of Commerce's ("the Department") results of redetermination² pursuant to the CIT's *Remand Order*.³

Consistent with the decision of the United States Court of Appeals for the Federal Circuit ("CAFC") in *Timken*,⁴ as clarified by *Diamond Sawblades*,⁵ the Department is notifying the public that the final judgment in this case is not in harmony with the Department's *Wood Flooring Final*,⁶ and is amending the final affirmative countervailing duty ("CVD") determination and order on multilayered wood flooring ("wood flooring") from the People's Republic of China ("PRC") covering the period of investigation, January 1, 2009, through December 31, 2009, with respect to the inclusion of Shanghai Eswell Enterprise Co., Ltd.

¹ See *Fine Furniture (Shanghai) Limited, et al. (Plaintiff) and Hunchun Forest Wolf Industry Company Limited, et al. (Plaintiff-Intervenors) v. United States (Defendant) and the Coalition for American Hardwood Parity (Defendant-Intervenors)*, Slip-Op. 12-138 (CIT 2012).

² See Final Results of Redetermination Pursuant to Remand in *Fine Furniture (Shanghai) Limited, et al. (Plaintiff) and Hunchun Forest Wolf Industry Company Limited, et al. (Plaintiff-Intervenors) v. United States (Defendant) and the Coalition for American Hardwood Parity (Defendant-Intervenors)*, CIT Court No. 11-00533, (October 31, 2012) (Public Version) ("Remand Results").

³ See *Fine Furniture (Shanghai) Limited, et al. (Plaintiff) and Hunchun Forest Wolf Industry Company Limited, et al. (Plaintiff-Intervenors) v. United States (Defendant) and the Coalition for American Hardwood Parity (Defendant-Intervenors)*, Slip-Op. 12-113 (CIT 2012) ("Remand Order").

⁴ See *Timken Co. v. United States*, 893 F.2d 337 (CAFC 1990) ("Timken").

⁵ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (CAFC 2010) ("Diamond Sawblades").

⁶ See *Multilayered Wood Flooring From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 64313 (October 18, 2011) ("Wood Flooring Final").

(“Eswell Enterprise”) and Elegant Living Corporation (“Elegant Living”) on the list of non-cooperating companies.

EFFECTIVE DATE: November 26, 2012

FOR FURTHER INFORMATION CONTACT: Joshua Morris, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1779.

SUPPLEMENTARY INFORMATION: Subsequent to completion of its CVD investigation of wood flooring from the PRC, parties filed a suit with the CIT challenging the inclusion of Eswell Enterprise and Elegant Living in the non-cooperating companies list. On August 31, 2012, the CIT remanded to the Department the issue of inclusion of Eswell Enterprise and Elegant Living on that list.⁷ The Department filed its *Remand Results* on October 31, 2012. On November 15, 2012, the CIT upheld the Department’s *Remand Results* wherein the Department reconsidered the inclusion of Elegant Living and Eswell Enterprises on the list of non-cooperating companies, and determined to remove Eswell Enterprise and Elegant Living from that list.⁸

Timken Notice

In its decision in *Timken*, as clarified by *Diamond Sawblades*, the CAFC held that, pursuant to section 516(e) of the Tariff Act of 1930, as amended (“the Act”), the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision.⁹ The CIT’s November 15, 2012, judgment sustaining the *Remand Results* constitutes a final decision of that court that is not in harmony with the *Wood Flooring Final*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department

⁷ See *Remand Order*.

⁸ See *Remand Results*.

⁹ See *Timken*, 893 F.2d at 341.

will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Determination and Countervailing Duty Order

Because there is now a final court decision with respect to Eswell Enterprise and Elegant Living, we are amending the *Wood Flooring Final* and the *Amended CVD Order*¹⁰ on wood flooring with respect to the margin for Eswell Enterprise and Elegant Living. Consequently, the Department will instruct U.S. Customs and Border Protection to impose cash deposits on entries of the subject merchandise exported by Eswell Enterprise or Elegant Living at the all-others rate of 1.50 percent.

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

November 23, 2012
(Date)

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¹⁰ See *Multilayered Wood Flooring From the People's Republic of China: Amended Antidumping and Countervailing Duty Orders*, 77 FR 5484 (February 3, 2012) (“*Amended CVD Order*”).